

203# 12

DENNY WAY/ LAKE UNION CSO AGREEMENT

CITY OF SEATTLE

KING COUNTY

THIS AGREEMENT made as of the 23<sup>rd</sup> day of October, 1995 between THE CITY OF SEATTLE, a municipal corporation of the State of Washington, hereinafter "the City" and KING COUNTY, a political subdivision of the State of Washington, hereinafter "the County".

WITNESSETH:

WHEREAS, the parties have entered into a long term agreement for sewage disposal dated January 26, 1961, as amended, hereinafter referred to as the "Basic Agreement"; and

WHEREAS, a portion of the City's sewer system consists of combined sewers that carry both sanitary sewage and storm water runoff and the Municipality of Metropolitan Seattle (predecessor to the County), hereinafter Metro, acquired some of the City's combined sewer trunks pursuant to the Basic Agreement; and

WHEREAS, the County (successor to Metro) and the City have been planning specific projects to reduce combined sewer overflows into Lake Union and Elliott Bay (in the vicinity of Denny Way) in accordance with the respective City and

Metro Combined Sewer Overflow (CSO) Plans adopted in 1988;  
and,

WHEREAS, the City and Metro jointly and cooperatively  
undertook the "Feasibility Study for CSO Control for Lake  
Union/Denny Regulator" completed in May, 1992 and this study  
demonstrated that the nature and scope of the City's Lake  
Union project could be determined, in part, by the  
alternative selected for Metro's Denny Way project; and

WHEREAS, said study also determined that design and  
construction of Metro's Denny Way project concurrent with  
design and construction of the City's Lake Union project  
would enable the City to avoid construction of some  
facilities it would otherwise have to construct to meet the  
objectives of its project; and,

WHEREAS, to accomplish the foregoing, and to accept a  
grant from the U. S. Government for the benefit of both  
parties, the County is advancing the schedule for its Denny  
Way project, which would otherwise need to be completed by  
2006 to meet required CSO reduction levels for its system;  
and,

WHEREAS, the City is completing the design of the first  
phase of its East Lake Union collection and conveyance

system improvements described and illustrated in the "Lake Union Combined Sewer Overflow Control Plan" dated March, 1992 along with such environmental review as is required under the National Environmental Policy Act (NEPA) to establish the eligibility of the project for the aforementioned grant; and,

WHEREAS the County has completed the "Denny Regulator-Accelerated CSO Control Program" dated February, 1995 that identifies a preferred alternative for the County's Denny Way CSO Project along with other alternatives for storage of combined sewage and the County has entered into an agreement with the U.S. Government for the aforementioned grant to assist funding of both the City's project and the County's Denny Way CSO Project; and

WHEREAS, the County has accelerated the schedule for its Denny Way CSO Control project and will complete such environmental review as may be appropriate or required under NEPA to establish the eligibility of the project for said grant; and

WHEREAS, the parties have determined a cost share arrangement for the projects that reflects the proportionate benefit to be realized by each of the parties; and

WHEREAS, the combined projects will contribute to the improvement, enhancement and preservation of the region's water resources by significantly reducing the discharge of combined sewage into Lake Union and Elliott Bay;

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS DESCRIBED HEREIN, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Construction of the City's Lake Union Project.

The City will make every reasonable effort to construct its East Lake Union Combined Sewer Overflow (CSO) Control project, as generally described in Exhibit A attached hereto, in a manner and upon such schedule as may be necessary for the County to comply with the agreement between the County and the U. S. Government for the grant that has been awarded to the County.

Section 2. Construction of the County's Denny Way Project.

The County will make every reasonable effort to construct its Denny Way Combined Sewer Overflow (CSO) Control project, as generally described in Exhibit B attached hereto, in a manner and upon such schedule as may be necessary to comply with the agreement between the County and the U.S. Government for the grant-in-aid that has been awarded to the County.

Section 3. Cost Share. The City shall pay all costs associated with its East Lake Union project described in Section 1 above. The City shall also reimburse the County for 17% of the total project cost, less grants as determined in Section 9.C, of the County's Denny Way CSO project as described in Section 2. The total cost of the County's Denny Way CSO project shall include all costs of and/or related to design, construction, project management, construction inspection, right-of-way acquisition, legal support, environmental review, restoration and mitigation. The total cost shall also include all costs associated with obtaining necessary permits, any and all costs incurred as a result of permit conditions and any and all costs to defend said permits against any appeals, lawsuits or other actions.

Section 4. Permits. The City, if so requested by the County, shall be a co-applicant with the County for permits required by the City for the Denny Way CSO project.

Section 5. Ownership of Facilities. The City shall own and be solely responsible for the facilities constructed in accordance with Section 1 and the County shall own and be solely responsible for the facilities constructed in

accordance with Section 2.

Section 6. Grant Assistance.

A. Disbursement. The County will submit payment requests quarterly for expenditures incurred by either party for the projects described in Sections 1 and 2 to the U. S. Government pursuant to the grant agreement attached hereto as Exhibit C. Grant money received by the County for expenses incurred by the City for its project as described in Section 1 will be expeditiously provided to the City. The County may, at its discretion, stop submitting payment requests for expenditures incurred by the City when said requests shall have totalled \$6.5 million. The final allocation of the grant assistance between the parties shall be determined in the manner described in Section 9.C.

B. Records. The City will account for and maintain such records of expenditures as are necessary to fulfill the requirements of the County's aforementioned grant agreement with the U. S. Government.

C. Grant Conditions. The City will take any such actions requested by the County as may be necessary for the County to comply with the grant agreement between the County and the U. S. Government, along with associated requirements.

Section 7. Environmental Review. The County will undertake

and complete such environmental review not already completed by the City as may be required under the National Environmental Protection Act and the State Environmental Protection Act (SEPA) to construct both projects.

Section 8. SEPA and Permit Compliance. The parties acknowledge that the County's project as described in Section 2 may proceed only upon compliance with applicable environmental and permit requirements. It is contemplated that an environmental impact statement will be undertaken for the County's project in accordance with SEPA. The parties acknowledge that said environmental impact statement could result in a modified or alternative project for storage of combined sewage.

Section 9. Financial Relations.

A. Quarterly Billing. The City will reimburse the County quarterly for its share of the costs as described in Section 3 upon receipt of a properly documented invoice. The County will invoice the City quarterly and the City will make its reimbursement payment within 45 days from the date of invoice.

B. Quarterly Expense Submittal. The City will submit expenses to the County quarterly for purposes of requesting grant reimbursement in accordance with the grant agreement

between the County and the U. S. Government.

C. Allocation of Grant to Projects. It is the intent of the parties that proceeds of the grant received by the County from the U. S. Government for the projects described in Sections 1 and 2 above be applied to each of the two projects at proportions equal to the percentage of the total cost of the projects represented by each of the projects, less any other grants received for either of the projects. Total cost of each of the projects, for this purpose, shall consist of the elements described in Section 3.

Within 60 days of completion of the projects, defined as acceptance of the contractor's work by the City for its project and the County for its project, whichever is later, each of the parties will determine its project cost as defined in this Section 9.C. Within 45 days from said determination, the City or County shall make such payment to each other as may be necessary to accomplish the grant allocation described in this section and the cost share arrangement described in Section 3. The grant allocation method described in this Section and the cost share arrangement described in Section 3 shall be used for all final determinations of the financial obligations of the parties to each other under this agreement.



Section 10. Legal Relations

A. Indemnification. To the extent permitted by applicable law, the City and County release and shall protect, indemnify, defend and hold harmless each other, their respective employees, agents, contractors, subcontractors, officers, directors, attorneys, successors and assignees, from and against any and all liabilities, damages, claims, demands, judgements, losses, harm, costs, expenses, suits or actions caused by the acts or omissions of the indemnifying party, its agents, employees, contractors, subcontractors, officers, directors, attorneys, successors or assigns, arising out of or in connection with or as a result of this Agreement or the performance by the indemnifying party of any of its obligations hereunder.

B. Authorized Representatives. For purposes of this agreement the City's authorized representative will be its Director of Drainage and Wastewater and the County's authorized representative will be its Director of Water Pollution Control.

C. No Third Party Beneficiaries. In promising performance to one another under this agreement, the parties intend to create binding legal obligations to and rights of enforcement in one another. The parties do not intend to create any obligation or liability or promise any performance to any third party.

D. Basic Agreement Unchanged. The City and the County shall comply with all provisions of the Basic Agreement without qualification or condition by reason of any provision or interpretation of this agreement, the parties intending that the Basic Agreement shall not be affected or modified hereby.

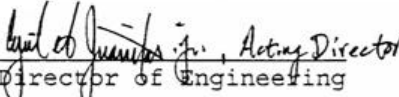
Section 11. Dispute Resolution. In the event disputes or claims arise over the interpretation, administration or effect of this agreement, either party may refer the matter to a committee composed of the Director of Water Pollution Control in King County's Department of Metropolitan Services, King County's Deputy Executive in responsible charge of the County's Water Pollution Control function or his/her designee, the City Engineer of Seattle and the Director of the City's Drainage and Wastewater Utility. The consideration of the dispute or claim by this committee, in an effort to reach a solution which reflects the best public interest, shall be a prerequisite to any legal action by either party.

Section 12. Termination. This agreement shall terminate upon fulfillment of the obligations of the parties to each other and fulfillment of the obligations contained in any

grant agreements for the projects or portions thereof.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS  
AGREEMENT AS OF THE DATE FIRST WRITTEN ABOVE.

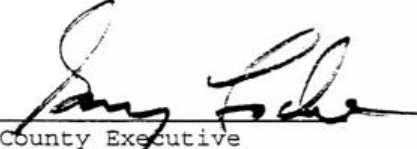
CITY OF SEATTLE

  
Director of Engineering

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 1995

\_\_\_\_\_  
City Clerk

KING COUNTY

  
County Executive

ATTEST:

\_\_\_\_\_  
Title

## 5. DESCRIPTION OF COMBINED SEWER OVERFLOW CONTROL ALTERNATIVES

### 5.1 SELECTED ALTERNATIVE - IMPROVED TRANSPORT

The improved transport alternative reduces the incidence of combined sewer overflows into Lake Union by upsizing the City of Seattle combined sewer along the eastern and southern sides of Lake Union and conveying flows to new storage/conveyance facilities to be constructed jointly with Metro.

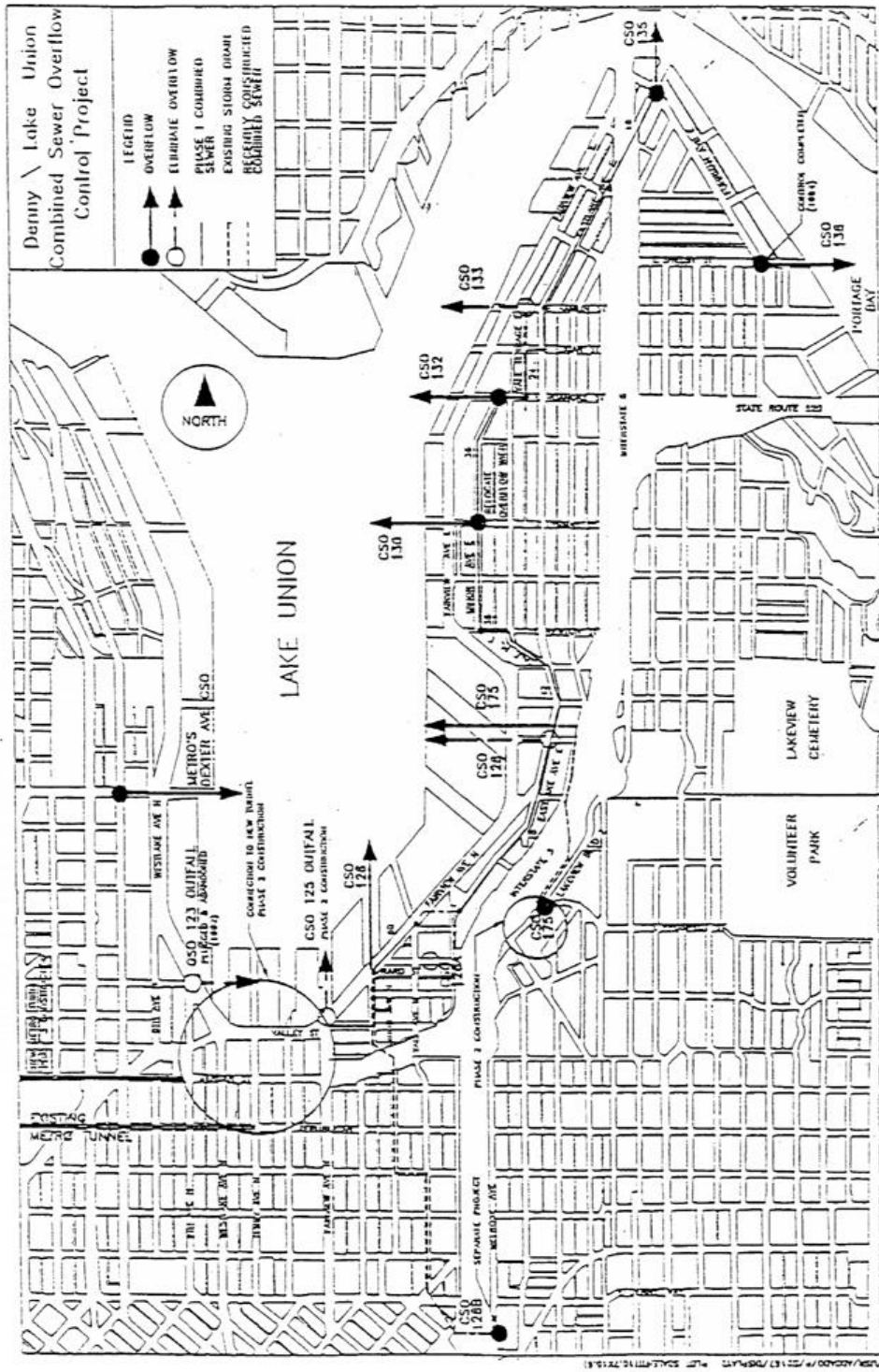
The selected alternative includes elimination of combined sewer overflows at CSOs 133, 128, 126 and 125. Overflows at CSO 125 will be reduced during Phase 1 and the outfall, which is a 24-inch diameter pipe on a public beach, will be removed during Phase 2. CSO 133 will be eliminated during Phase 1 construction, but the outfall will continue to operate with storm drain connections only. The CSO 128 outfall pipe will be abandoned and overflows will be combined with the I-5 storm drain flows and combined sewer overflows from CSO 175. CSO 126 will be eliminated during Phase 2, and/or as negotiated with the Fred Hutchinson Cancer Research Center, and the outfall will continue to operate as a storm drain only.

Improved transport is the only alternative developed that reduces total sediment loadings to Lake Union. The *Lake Union Water Quality/Environmental Assessment* estimates "an 18 percent reduction in total sediment loading and a 19 percent reduction in total sediment plume area covering Lake Union." Stormwater discharges would remain unchanged in volume.

The proposed combined sewer pipeline was sized to prevent overflows during Design Storm #6 after construction of Phases 1, 2, and 3. It is sensitive to high intensity rainfall and will continue to overflow during larger storms. The overflow events from the City of Seattle system model are predicted to be typically of short duration and small volume. The annual combined sewer overflow volumes to Lake Union from this system will be reduced by 99%, or from 86 million gallons to less than one million gallon per year.

Phase 1 of the selected alternative includes construction of over two miles of enlarged combined trunk sewer ranging in size from a minimum of 18-inch diameter pipe at the north end near CSO 135 to a minimum of 60-inch diameter pipe at the south end. Four new flow control structures will

Figure 5-1: Selected Alternative-- Improved Transport Alternative



1600 feet of 60-inch outfall pipeline for CSO flows in excess of storage capacity; two 70 million gallons per day pump stations; and a 150-foot 96-inch diameter extension to the outfall at the existing Denny CSO structure.

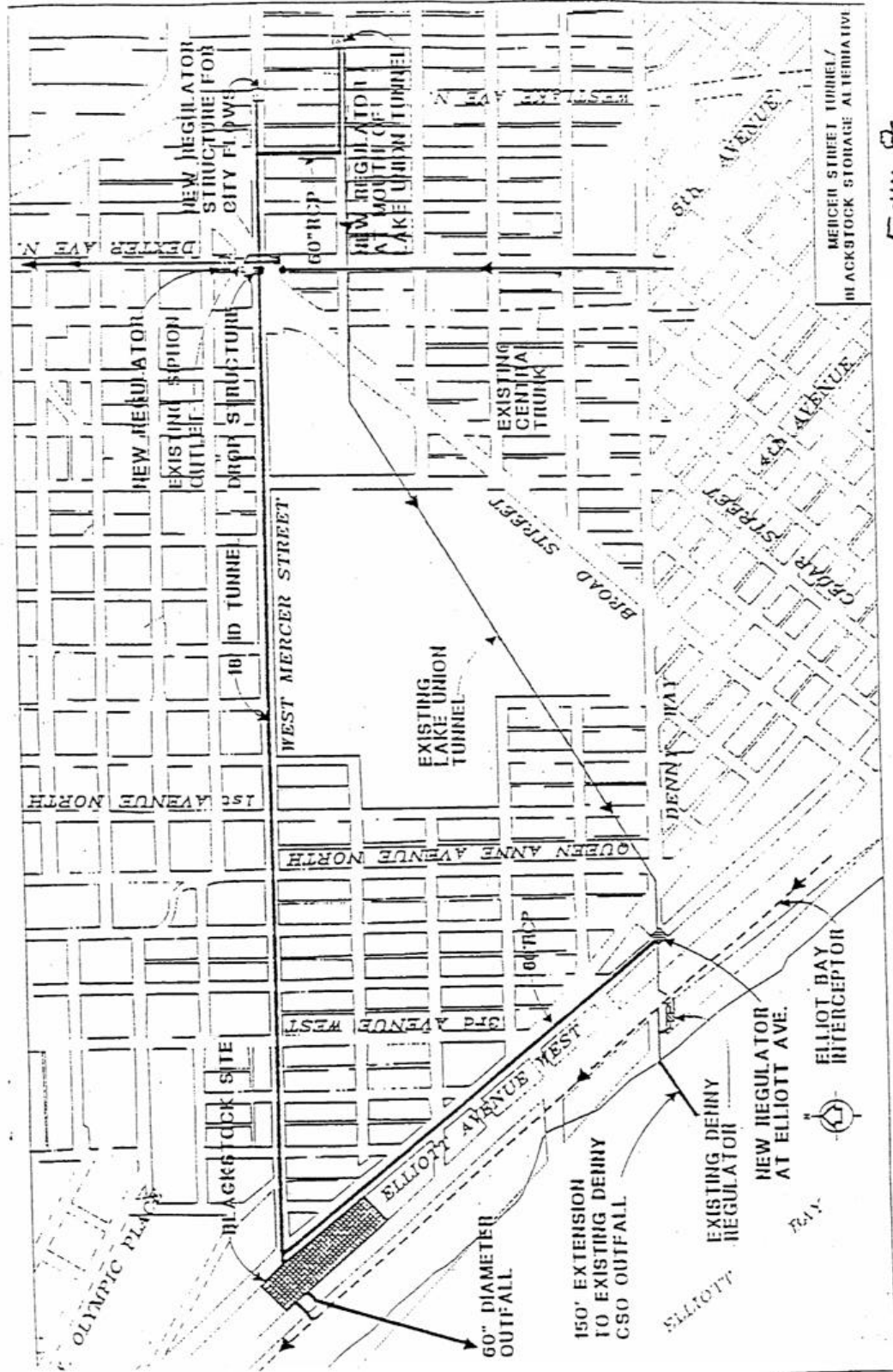
An advantage of the preferred alternative is the system redundancy provided to Metro by a new tunnel. The existing brick tunnel was found to be in good shape for its age (100 years) in a recent study by Brown and Caldwell. In that study it was recommended that Metro continue monitoring the condition of the tunnel and relining it when point repairs would no longer insure structural integrity. In the same study it was acknowledged that the current tunnel has insufficient capacity, which makes relining undesirable. Construction of a new tunnel would allow future relining of the brick structure by providing the necessary extra conveyance capacity.

The total project cost for Phases 1, 2, and 3 is estimated at \$126 million (in 1994\$).

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*Figure B*  
Exhibit B